

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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March 29, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

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Re: Jurisdictional Separations Reform and
Referral to the Federal-State Joint Board
CC Docket No. 80-286

Dear Ms. Salas:

Enclosed please find an original and four copies of the Comments of the Pennsylvania Office of Consumer Advocate to the State Members' Report on Comprehensive Review of Separations, for filing with the Commission in the above-referenced matter. We will also attempt to file our Comments via the Commission's Electronic Filing of Documents.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosure

cc: David W. Rolka, Commissioner, Pa. Public Utility Commission
Joan H. Smith, Oregon Public Utility Commission
Thomas L. Welch, Maine Public Utility Commission
James Posey, Alaska Public Utility Commission

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

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MAR 30 1999

In the Matter of	:	DA 99-414
	:	
Jurisdictional Separations Reform	:	CC Docket No. 80-286
and Referral to the Federal-State	:	
Joint Board	:	

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**COMMENTS OF
THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE
TO THE STATE MEMBERS' REPORT ON
COMPREHENSIVE REVIEW OF SEPARATIONS**

I. Introduction

The Pennsylvania Office of Consumer Advocate ("OCA") hereby submits these Comments concerning the State Members' Report on Comprehensive Review of Separations ("State Members' Report") as submitted to the Federal Communications Commission ("Commission") on December 21, 1998. The OCA is designated by Pennsylvania state law to represent public utility ratepayers before the Pennsylvania Public Utility Commission, federal agencies and state and federal courts. The OCA is actively involved in representing consumer interests in telecommunications issues in state and federal venues and submits these Comments to generally support the State Members' Report. The OCA also submits these Comments to emphasize the importance of protecting basic local telephone rates as articulated in Section 254(k) of the Telecommunications Act of 1996 ("the Act"). Therefore, the OCA submits that the separations process, as discussed in the State Members' Report, should be resolved in a manner that does not result in increases to basic local telephone rates for consumers.

The Commission summarized the State Members' Report as follows:

On December 21, 1998, the state members of the Joint Board on jurisdictional separations filed a State Report with the Commission setting forth additional issues that should be addressed by the Joint Board in connection with its consideration of comprehensive separations reform, including a proposal for an interim approach to separations reform pending adoption of comprehensive reform. The State Report indicates that the state members of the Joint Board are developing questions to complement the issues raised in the Report and requests that the Commission simultaneously seek comment on the State Report and the questions.

Notice at 1. Therefore, the Commission specifically requested comment concerning the State Report and the questions developed in the Report.

II. Separations Should Not Increase Basic Local Telephone Service Rates Under Section 254(k) of the Telecommunications Act of 1996

The OCA concurs with the State Members' Report concerning the importance of separations with regard to section 254(k) of the Act. Section 254(k) states:

The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that service included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

47 U.S.C. §254(k). Therefore, section 254(k) expressly limits the assignment of loop costs to local exchange service. The OCA submits that implementation of the universal service provisions and protections in the Act require the continuation of accounting and separation with changes that ensure that the cost of providing basic local telephone service to consumers does not increase.

The Congressional Joint Explanatory Statement of the Committee of Conference, which drafted the final version of the Act, explained section 254(k) as follows:

The Commission and the States are required to establish any necessary cost allocation rules, accounting safeguards, and other guidelines to ensure that universal service bears no more than a reasonable share (and may bear less than a reasonable share) of the joint and common cost of facilities used to provide both competitive and noncompetitive services.

Conference Report at 129 (emphasis added). Thus, by federal statute, local service can be forced “to bear no more than a reasonable share” of loop costs. Indeed, as noted in the Congressional Conference Report, Section 254(k) allows local service to bear less than such a reasonable share, but not more. In other words, the cost of providing local telephone service is allowed to bear only a reasonable share of such costs in rate increase proceedings.

The OCA concurs with the State Members’ Report that the fundamental purpose of the Act was to permit competition in the local exchange while, at the same time, Congress included explicit provisions in section 254(k) that universal service and basic local rates should not bear the responsibility of funding the creation of that competitive environment. Section 254(k) ensures accurate cost allocations within each jurisdiction so that services included in the definition of universal service bear no more than a “reasonable share” of joint and common costs. This insurance becomes increasingly more important as the local telephone service becomes a competitive environment. With increasing competition, more and more services that have been regulated in the past, and many services that have never been regulated, are being provided on an unregulated basis using much of the same telecommunications plant that is subject to separations.

It is clear that, in enacting section 254(k), Congress was concerned that universal service should not be burdened by an unreasonable share of joint and common costs through any greater imposition of such costs upon local basic telephone rates. The OCA supports the State Members' Report proposal that the FCC should be extremely concerned about any additional allocation of loop costs to the intrastate jurisdiction. If any greater portion of the costs were shifted to the intrastate jurisdiction, it would become increasingly difficult to avoid cost allocation within the intrastate jurisdiction to universal service rates.

Further, the OCA submits that separations has, throughout its history, been viewed as a way to help keep basic service rates low by assigning costs to the interstate jurisdiction where those costs would be recovered through usage-based interstate toll charges. The OCA emphasizes that section 254(k) restricts loop recovery to "no more than a reasonable share" in both the federal and state jurisdictions and that separations procedures, although modified, should be continued to ensure that basic local telephone rates do not increase. Section 254(k) calls on state commission, the FCC and the Joint Board to protect universal service from paying more than a reasonable share of joint and common costs applicable to any interstate service rates. The Act seeks to safeguard these services from paying an unreasonable share of these costs from any source whatsoever.

III. The Need for Continued Separations

The OCA submits that the State Members' Report generally represents an excellent presentation of the current state of issues involving separations. In particular, the OCA concurs that under the present system of dual regulation of telecommunications property, some form of

separations, which allocates all telecommunications costs between state and federal jurisdictions, will continue to be needed, with possible substantial reform, for at least the next few years.

The OCA also concurs with the State Members' Report in identifying deficiencies in the current separations process. In particular, the OCA submits that the effects of technology have made allocations more arbitrary and that usage, which the State Members' Report calls the 'linchpin of separations,' is now more difficult to track. Certainly, the tremendous increased use of the Internet further exacerbates the problems that arise from these areas where there has been much debate over whether a call placed to an Internet Service Provider is inter- or intra-state in nature for jurisdiction purposes.

IV. Conclusion

The Pennsylvania Office of Consumer Advocate requests the Commission to review these Comments as it considers what actions to take concerning the State Members' Report.

Respectfully submitted,



Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Assistant Consumer Advocates

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
Office of Attorney General
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Dated: March 29, 1999

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board
CC Docket No. 80-286

I hereby certify that I have this day served a true copy of the foregoing document,
Comments, upon parties of record in this proceeding.

Dated this 29th day of March, 1999.

Respectfully submitted,



Joel H. Cheskis
Assistant Consumer Advocate

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